

Federal Maritime Commission

§ 583.3

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APPENDIX A TO PART 583—NON-VESSEL-OPERATING COMMON CARRIER (NVOCC) BOND FORM

APPENDIX B TO PART 583—NON-VESSEL-OPERATING COMMON CARRIER (NVOCC) INSURANCE FORM (FMC-67)

APPENDIX C TO PART 583—NON-VESSEL-OPERATING COMMON CARRIER (NVOCC) GUARANTY FORM (FMC-68)

APPENDIX D TO PART 583—NON-VESSEL-OPERATING COMMON CARRIER (NVOCC) GROUP BOND FORM (FMC-69)

AUTHORITY: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710–1712, 1716, and 1721.

SOURCE: 56 FR 51993, Oct. 17, 1991, unless otherwise noted.

§ 583.1 Definitions.

In this part:

(a) *Act* means the Shipping Act of 1984 (46 U.S.C. app. 1701 et seq.).

(b) *Common carrier* means a person holding itself out to the general public to provide transportation by water of cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from port or point of receipt to the port or point of destination; and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker. As used in this paragraph, 'chemical parcel-tanker' means a vessel whose cargo-carrying capability consists of individual cargo tanks for bulk chemicals that are a permanent part of the vessel, that have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination and that has a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

(c) *Commission* means the Federal Maritime Commission.

(d) *Non-vessel-operating common carrier or NVOCC* means a common carrier

that does not operate the vessels by which the ocean transportation is provided and is a shipper in its relationship with an ocean common carrier.

(e) *Ocean common carrier* means a vessel-operating common carrier.

(f) *Person* includes individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country.

§ 583.2 Scope.

This part implements the Non-Vessel-Operating Common Carrier Amendments of 1990, Public Law No. 101-595, section 710, and the Non-Vessel-Operating Common Carrier Act of 1991, Public Law No. 102-251, section 201 and applies to all NVOCCs operating in the waterborne foreign commerce of the United States.

[58 FR 5623, Jan. 22, 1993]

§ 583.3 Proof of financial responsibility, when required.

(a) Except as provided in paragraph (c) of this section, no person may provide transportation as a non-vessel-operating common carrier or obtain transportation for the account of such NVOCC unless a surety bond, insurance form, or guaranty form which demonstrates that such NVOCC is covered for any transportation-related liability under the Shipping Act of 1984 has been furnished to and accepted by the Commission. Where a group or association of NVOCCs accepts liability for all or part of an NVOCC's financial responsibilities for such NVOCC's transportation-related activities under the Shipping Act of 1984, the group or association of NVOCCs must file either a group supplemental coverage bond form, insurance form or guaranty form, clearly identifying each NVOCC covered, before a covered NVOCC may provide transportation as a non-vessel-operating common carrier or obtain transportation for the account of such NVOCC. An individual NVOCC's bond, insurance or guaranty coverage shall be for \$50,000 except in the case where an individual NVOCC's responsibility is covered, in whole or in part, by a group or association's bond, insurance or guaranty. In such cases the group or association's coverage must be for

\$50,000 per covered member NVOCC, or \$1,000,000 in aggregate.

(b) Where more than one entity operates under a common trade name, separate proof of financial responsibility is required covering each corporation or person separately providing transportation as a non-vessel-operating common carrier.

(c) Any person which exclusively transports used household goods and personal effects for the account of the Department of Defense, or for the account of the federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration, or both, is not subject to the requirements of this part, but may be subject to other requirements, such as alternative surety bonding, imposed by the Department of Defense or the General Services Administration.

[58 FR 5623, Jan. 22, 1993, as amended at 60 FR 44437, Aug. 28, 1995]

§ 583.4 Financial responsibility requirements.

Prior to the date it commences common carriage operation, every non-vessel-operating common carrier shall establish its financial responsibility for the purpose of this part by one of the following methods:

(a) Surety bond, by filing with the Commission, simultaneously with its tariff, a valid bond on Form FMC-48, in the amount of \$50,000. Bonds must be issued by a surety company found acceptable by the Secretary of the Treasury.

(b) Insurance, by filing with the Commission, simultaneously with its tariff, evidence of insurance on Form FMC-67. The insurance must provide coverage for damages, reparations or penalties arising from any transportation-related activities under the Shipping Act of 1984 of the insured NVOCC and must be placed with:

(1) An Insurer having a financial rating of Class V or higher under the Financial Size Categories of A.M. Best & Company, or equivalent from an acceptable international rating organization;

(2) Underwriters at Lloyd's; or

(3) Surplus lines insurers named on a current "white list" issued by the Non-

Admitted Insurers' Information Office of the National Association of Insurance Commissioners.

This evidence of financial responsibility shall be accompanied by: In the case of a financial rating, the Insurer's financial rating on the rating organization's letterhead or designated form; in the case of insurance provided by Underwriters at Lloyd's, documentation verifying membership in Lloyd's; and in the case of insurance provided by surplus lines insurers, documentation verifying inclusion on a current "white list" issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners. The Insurer must certify that it has sufficient and acceptable assets located in the United States to cover all transaction-related liabilities of the Insured NVOCC as specified under the Shipping Act of 1984.

(c) Guaranty, by filing with the Commission, simultaneously with its tariff, evidence of guaranty on Form FMC-68. The guaranty must provide coverage for damages, reparations or penalties arising from any transportation-related activities under the Shipping Act of 1984 of the covered NVOCC and must be placed with:

(1) A Guarantor having a financial rating of Class V or higher under the Financial Size Categories of A.M. Best & Company, or equivalent from an acceptable international rating organization;

(2) Underwriters at Lloyd's; or

(3) Surplus lines insurers named on a current "white list" issued by the Non-Admitted Insurer's Information Office of the National Association of Insurance Commissioners.

This evidence of financial responsibility shall be accompanied by: In the case of a financial rating, the Guarantor's financial rating on the rating organization's letterhead or designated form; in the case of a guaranty provided by Underwriters at Lloyd's, documentation verifying membership in Lloyd's; and in the case of an guaranty provided by surplus lines insurers, documentation verifying inclusion on a current "white list" issued by the Non-Admitted Insurers' Information Office